

Atty Docket No.: B-03-0208

**REMARKS**

Claims 1-9 and 23-35 are present in this application. Claims 1, 23, 24 and 32 have been amended in each instance to convey that the variable-duct assembly(s) are attached (mounted) to the airframe.

The amended claims are independent claims so that all claims directly or indirectly dependent thereon include this limitation.

In the instant office action, the Examiner has rejected claims 1, 3-9 and 23 as being unpatentable under 35 U.S.C. 103(a) over Dean in view of Bach and claims 2 and 24-35 as being unpatentable over Dean in view of Bach and further in view of "applicants' admission that aircraft manufactures are well known for producing aircrafts having HVAC systems...typically comprised of a series of cylindrical tubing or ducts [typically requiring] a plurality of support assemblies for mounting each support assembly to the airframe of the aircraft."

In a previous amendment, the applicants argued that Dean and Bach were non-analogous art and not properly used in holding applicants' invention obvious. The arguments previously advanced as to applicants' position are incorporated by reference into this amendment.

The two references relied on by the Examiner in rejecting the claims are directed to a boat rack for carrying a boat on a vehicle's roof (Dean) and to a pipe hanging system for attaching pipes for "contractors, plumbers, steam fitters, industrial electricians, and millwrights, ... in a variety of mill building constructions." (Bach – column 3, lines 15-17).

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It is noted that Bach is classified in class 248-59, Dean in 224/324 and the instant application in class 244. Different art classification is an important consideration in determining whether the art is analogous or not and more importantly whether it is properly combinable.

There is no suggestion nor would the artisan look to either of these references for help for installing pipes, tubes, etc. in an aircraft where for one thing the effects of vibration, shock, surge, temperature and unwanted noise are major concern. Improperly supported pipes, tubes, etc. invite line failure and potential problems.

The references do not deal with aircraft, do not suggest that they can be applied to this field, i.e., do not include this limitation and therefore are not properly applied. It is noted that the claims have been amended to recite that the flexible band is resilient and significantly stiff for supporting the ducts as recited.

It is submitted that Bach and Dean are not within the field of the invention and further not reasonably pertinent to the technological problems that persons working in the field would turn to in seeking a solution to the problem. Information from a technology that is so far removed from the field to which an invention pertains is not considered to be prior art, it is rather non-analogous art, i.e., it would not logically commended itself to an inventor's attention in considering his problem. Thus as held in *In re Clay*, 966 F.2d 656, 23 USPQ2d 1058 (Fed. Cir. 1992), the purpose of both the invention and the prior art are important in determining whether the reference is reasonably pertinent to the problem the invention attempts to solve.

The Examiner has also not accepted the applicants' arguments as to whether the recitation "for mounting a duct to an airframe of an aircraft" in the claims should be

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given patentable weight. This is no longer an issue as the language is now included in the body of the claim.

It is the applicant's position that the preamble as contained in their claims (still present) does not merely state a purpose or intended use, but rather recites a positive limitation of the invention claimed. The prior art does not suggest this limitation intrinsic to the invention. The claims are not invalid for obviousness.

The Examiner's position is that Dean teaches a rail 20 (in fact, reference numeral 20 identifies a "roof rack mounted on the roof 18 of vehicle 12" and is configured to support a watercraft), at least one pair of support brackets 28 "coupled to rail positioned to support proximal surfaces (in fact the rack 20 includes a plurality of towers mounted on either side of the vehicle roof with cylindrical cross-bars 24 attached to opposing towers and extending laterally over the roof of the vehicle), and at least one flexible band 84 for distributing a clamping load substantially across a distal surface. (Dean is specific that the securing members 32 are connected to hold the boat securely against mounts 28 so that the boat will not be dislodged from the mounts during operation of the vehicle).

The Examiner admits that Dean does not teach the use of a grooved rail, but rather a curved tube along which the brackets clamp, nor does Dean teach supporting a duct. The examiner however relied on Bach to for curing this omission, noting that Bach and Dean are in the same fields of endeavor, being adjustable mounting systems.

As to the same filed of endeavor (see above) and note that boat racks and pipe hanger systems are not believed to be in the same field of endeavor. There is further more no teaching or suggestion coming from the references to make the modification proposed by the Examiner. The Examiner's conclusion regarding motivation comes from the

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Examiner and is based on his knowledge of the applicants' disclosure which is clearly not available for that purpose.

The rejection of the dependent claims on Dean in view of Bach also fails as the dependent claims include all of the limitations of the independent claims, which are not taught or suggested by the references.

The rejection of claims 2 and 24-35 as being unpatentable under 35 U.S.C. 103(a) when taken "in view of applicants' admission that "aircraft manufacturers are well known for producing aircrafts having HVAC systems, [typically requiring] a plurality of support assemblies for mounting each support assembly to the airframe of the aircraft." This is a misquote since at the very least "the support assemblies (are) for mounting the duct to the airframe of the aircraft."

It is submitted that for all of the reasons set out above, the actual statement made in the application, namely to the effect that aircraft are manufactured with HVAC or other systems with ductwork and as to the know systems, the applicants' invention constitutes an improvement in the standard form of disclosure of the prior art very broadly stated and is not seen to provide the motivation for the combining of Dean and Bach, neither of which deals with aircraft, etc.

The rejection of claims 2 and 24-35 should be withdrawn.

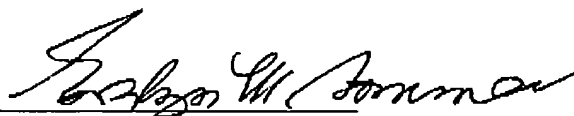
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**SUMMARY**

It is respectfully requested that the claims be indicated as allowable and notification to this effect is respectfully requested.

Respectfully Submitted  
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